EXHIBIT D

PUC DOCKET NO. 31577

PETITION OF SPRINT COMMUNICATIONS COMPANY, L.P. FOR COMPULSORY ARBITRATION UNDER THE FTA TO ESTABLISH TERMS AND CONDITIONS FOR INTERCONNECTION TERMS WITH CONSOLIDATED COMMUNICATIONS OF FORT BEND COMPANY and CONSOLIDATED COMMUNICATIONS COMPANY OF TEXAS	§ § § § § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

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ARBITRATION AWARD

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ARBITRATION AWARD

This Arbitration Award (Award) resolves various Interconnection Agreement disputes between Sprint Communications, L.P. (Sprint) and Consolidated Communications of Fort Bend Company (CCFB) and Consolidated Communications Company of Texas (CCFB), (CCTX and CCFB collectively referred to as Consolidated; Sprint and Consolidated are each a Party). As detailed in this Award, the Arbitrators have determined that:

- The Arbitrators adopt the definition End User as proposed by Sprint with modifications;
- There is no requirement to name last-mile providers in the Interconnection Agreement;
- Compensation for traffic exchanged between the Parties should be treated in the same manner as any other voice traffic;
- There is no requirement for Sprint to "warrant" that it is a telecommunications carrier;
- The service provided to last-mile providers under wholesale arrangement does not constitute transit traffic;
- The initial term of the Interconnection Agreement shall be for two (2) years;
- The Local Service Request (LSR) charges proposed by the Parties are unsupported by the evidence submitted, and so there shall be no charge for porting a telephone number;
- Definitions of IP-PSTN, Responsible Party, Sprint-Last Mile Provider, and Unclassified traffic are appropriate to include in the Interconnection Agreement.
- Proposed Attachment No. 10 that addresses IP-PSTN Termination Traffic is necessary and should be included in the Interconnection Agreement.

I. JURISDICTION

The Federal Communications Act of 1934 (FCA)[1] as amended by the Federal Telecommunications Act of 1996 (FTA)[2] authorizes state commissions to arbitrate open issues between an incumbent local exchange carrier (ILEC) and a requesting telecommunications carrier.[3] The FTA also invests state commissions with authority to approve or reject interconnection agreements (ICAs) adopted by negotiation or arbitration.[4] The FTA's authorization to approve or reject these interconnection agreements carries with it the authority to interpret and enforce the provisions of agreements that state commissions have approved.[5] The Public Utility Commission of Texas (Commission) is a state commission responsible for arbitrating interconnection agreements approved pursuant to the FTA.

II. PROCEDURAL HISTORY

On September 1, 2005 Sprint filed a petition for compulsory arbitration under the FTA to establish interconnection terms and conditions for interconnection terms with CCFB (Docket No. 31577) and CCTX (Docket No. 31578). The two petitions are identical except for the names of the Parties. On September 23, 2005 CCTX and CCFB each filed its response to motion for consolidation, motion to dismiss, request for a threshold issue and response. On September 23, 2005 the Commission issued its Order No. 1[6] in Docket No. 31577 and 31578, abating the proceedings and invited CCTX and CCFB to brief the threshold issues as part of the Commission's proceedings in Docket No. 31038, *Petition of Sprint Communications, L.P. for*

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[1] Federal Communications Act of 1934, 47 U.S.C. § 151 *et seq.*

[2] Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified in various sections of 47 U.S.C.).

[3] 47 U.S.C. § 252(b).

[4] 47 U.S.C. § 252(e).

[5] *Southwestern Bell Tel. Co. v. Public Util. Commission of Texas*, 208 F.3d 475, 479-480 (5th Cir. 2000); *see also, Verizon Maryland, Inc. v. Global Naps, Inc.*, 377 F.3d 355, 364-365 (4th Cir. 2004); *Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 583 (6th Cir. 2002); *MCI Telecommunications Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 337-338 (7th Cir. 2000); Iowa Utils. Bd. v. FCC, 120 F.3d 753, 804 (8th Cir. 1997), aff'd in part, rev'd in part on other grounds, AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999); Southwestern Bell Tel. Co. v. Brooks Fiber Communications of Okla., Inc., 235 F.3d 493, 496-497 (10th Cir. 2000); BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Servs., Inc., 317 F.3d 1270, 1277-1278 (11th Cir. 2003).

Compulsory Arbitration under the FTA to Establish Terms and Conditions for Interconnection Terms with Brazos Telecommunications, Inc. On December 2, 2005 the Commission denied Sprint's appeal of the Commission's Order No. 1[7] in Docket No. 31038. That order required Sprint to petition to lift Brazos Telecommunications, Inc.'s (BTI) rural exemption under FTA § 251(f)(1)(a) before proceeding to negotiate and arbitrate an interconnection agreement with BTI and finding that BTI was not obligated to negotiate and arbitrate an interconnection with Sprint until such time, if ever, the Commission determined that BTI's rural exemption should be lifted. Sprint filed a petition seeking to terminate Consolidated's FTA § 251 rural exemption on March 31, 2006 (Docket No. 32582). On April 14, 2006, CCFB filed its motion to dismiss Sprint's petition for compulsory arbitration in Docket No. 31577 and CCTX did the same in Docket No. 31578, each arguing that pursuant to Order No. 1 in Docket No. 31038, Consolidated had no obligation to negotiate or arbitrate interconnection terms until the Commission made a determination regarding Consolidated's rural exemption status in response to Sprint's petition in Docket No. 32582. Sprint filed its response to the CCTX/CCFB motions to dismiss in Dockets No. 31577/31578 on April 21, 2006. Consolidated replied, Sprint rebutted and on May 23, 2006 the arbitrator issued Order No. 2[8] in Dockets No. 31577/31578, finding that Sprint was required to obtain a ruling from the Commission terminating Consolidated's rural exemption status before Consolidated would have an obligation to negotiate and arbitrate interconnection terms.

On June 12, 2006 Sprint appealed Order No. 2 in Docket Nos. 31577/31578. Consolidated responded and Sprint replied, and on June 29, the Commission considered the matter at an Open Meeting on June 29, 2006. On July 28, 2006 the Commission issued its Order on Appeal of Order No. 2[9] in Docket Nos. 31577/31578, vacating Order No. 2 in both dockets and reinstating and abating the proceedings in Docket Nos. 31577/31578 pending the resolution of Docket No. 32582. Docket Nos. 31577/31578 were again considered at an Open Meeting of

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[6] Order No. 1, Docket No. 31577, Notifying Parties of Briefing (Sept. 23, 2006) and Order No. 1, Docket No. 31578, Notifying Parties of Briefing (Sept. 23, 2006).

[7] Order No. 1, Docket No. 31038, Granting Motion to Dismiss (Dec. 2, 2005).

[8] Order No. 2, Docket No. 31577, Dismissing Proceedings (May 23, 2006) and Order No. 2, Docket No. 31578, Dismissing Proceedings (May 23, 2006).

[9] Order on Appeal of Order No. 2, Docket No. 31577, Vacating Order No. 2, Reinstating Arbitration Proceedings and Abating (Jul. 28, 2006) and Order on Appeal of Order No. 2, Docket No. 31578, Vacating Order No. 2, Reinstating Arbitration Proceedings and Abating (Jul. 28, 2006).

the Commission on August 10, 2006, and the draft order proposed in Docket No. 32582 was adopted. On August 14, 2006, the Commission issued its Final Order in Docket No. 32582.[10] Paragraph 2 of the ordering paragraphs of that Final Order held that the arbitration of the terms of interconnection in Docket Nos. 31577/31578 were to proceed pursuant to a procedural schedule to be set by the arbitrator in those dockets. On August 28, 2006, the Arbitrators in Docket Nos. 31577/31578 issued a notice of prehearing conference by Order No. 3[11] to be held on August 31, 2006. On August 31, 2006 the prehearing conference was held and dates for a procedural schedule were discussed. On August 25, 2006, the Parties filed a joint proposal for adoption of a scheduling order and protective order. On September 5, 2006, the Parties filed a joint motion to consolidate Docket Nos. 31577/31578. On September 11, 2006, Sprint filed its amended petition for arbitration. On September 29, 2006, the Arbitrators issued Order No. 4[12] setting the procedural schedule and entering a protective order. On October 2, 2006, Consolidated filed a motion to dismiss, motion to abate and its first amended response to Sprint's amended petition for arbitration, arguing that the Commission erred in reinstating Docket Nos. 31577/31578 and that the Commission should have instead required Sprint to file a new arbitration petition and start the arbitration clock anew, or in the alternative, that the proceedings should be abated until such time as the FCC issues a decision on an action seeking a declaratory ruling filed by Time Warner Cable with the FCC.[13] On October 5, 2006, Order No. 5[14] was issued consolidating Docket Nos. 31577/31578 into Docket No. 31577. On October 9, 2006, Sprint filed its response to Consolidated's motion to dismiss and motion to abate. On October 12, 2006, the Parties filed direct testimony. The Parties filed rebuttal testimony on October 23,

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[10] Final Order, Docket No. 32582, Terminating Consolidated's Rural Exemption (Aug. 14, 2006).

[11] Order No. 3, Docket No. 31577, Notice of Prehearing Conference (Aug. 28, 2006) and Order No. 3, Docket No. 31578, Notice of Prehearing Conference (Aug. 28, 2006).

[12] Order No. 4, Docket No. 31577, Setting Procedural Schedule and Entering Protective Order (Sept. 29, 2006) and Order No. 4, Docket No. 31578, Setting Procedural Schedule and Entering Protective Order (Sept. 29, 2006).

[13] Fed. Communications Comm'n, *Petition of Time Warner for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecomms. Servs. To VoIP Providers,* Petition for Declaratory Ruling, WC Docket No. 06-55 (filed Mar. 1, 2006).

[14] Order No. 5, Docket No. 31577, Consolidating Proceedings (Sept. 29, 2006) and Order No. 5, Docket No. 31578, Consolidating Proceedings (Sept. 29, 2006).

2006. On October 31, 2006 the Arbitrators issued Order No. 8[15] denying Consolidated's motion to dismiss and its motion to abate, finding that the issues raised by Consolidated in its motion to dismiss and motion to abate had been considered and ruled upon by the Commission in Docket No. 32582, and also because Time Warner Cable had informed Sprint that it no longer had in interest in pursuing the proposed business arrangement that in part gave rise to the present controversy and this docket. The Arbitrators conducted a hearing on the merits on November 2, 2006. The Parties filed their post-hearing briefs on November 10, 2006.

III. RELEVANT STATE AND FEDERAL PROCEEDINGS

Relevant Commission Decisions

Docket No. 32582

In Docket No. 32582, the Commission terminated Consolidated's FTA § 251 rural exemption, thereby obligating Consolidated to negotiate and arbitrate the terms of interconnection with Sprint.[16]

Docket No. 31038

In Docket No. 31038 the Commission found that Sprint was required to seek and obtain the termination of Brazos Telecommunications, Inc.'s (BTI) FTA § 251 rural exemption status before BTI would be obligated to negotiate and arbitrate terms of interconnection with Sprint.[17] Sprint successfully sought to terminate Consolidated's FTA § 251 rural exemption status in Docket No. 32582.

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[15] Order No. 8, Docket No. 31577, Denying Consolidated's Motion to Dismiss/Abate (Oct. 31, 2006).

[16] *Petition of Sprint Communications Company L.P. to Terminate Rural Exemption as to Consolidated Communications of Fort Bend Company and Consolidated Communication of Texas Company*, Docket No. 32582, Final Order (Aug. 14, 2006).

[17] *Petition of Sprint Communications Company L.P.for Compulsory Arbitration under the FTA to Establish Terms and Conditions for Interconnection Terms with Brazos Telecommunications, Inc.*, Docket No. 31038, Order Denying Sprint's Appeal of Order No. 1 (Dec. 2, 2005).

Docket No. 32917

In Docket No. 32917 Consolidated Communications of Fort Bend Company and ETS Telephone Company Inc. jointly submitted an interexchange agreement that contained provisions relating to VoIP traffic to the Commission for approval. The Commission approved the interconnection agreement on July 25, 2006.[18]

Docket No. 24547

In Docket No. 24547 the Commission ruled that OSS functions are unbundled network elements (UNEs) and that prices for UNEs should be based on total element long run incremental cost (TELRIC). The docket was an arbitration for interconnection between 1-800-4-A-Phone and Southwestern Bell Telephone Company.[19]

Relevant Federal Communications Commission Decisions

In re Universal Service Contribution Methodology

This FCC order established that "interconnected VoIP service" providers are obligated to make universal service fund contributions and that such providers are reaching the public switched telephone network through arrangements with telecommunications carriers.[20]

PIC Change Charge Order

The *PIC Change Charge Order* established a $1.25 safe harbor charge for an electronic presubscribed interexchange carrier (PIC) charge and a safe harbor charge of $5.50 for manually processed PIC changes. PIC change charges are federally tariffed charges imposed by local

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[18] Docket No. 32917, *Joint Application of Consolidated Communications Company of Fort Bend Company and ETS Telephone Company, Inc. for Approval of an Interconnection Agreement under the Federal Telecommunications Act of 1996 and the Public Utility Regulatory Act*, Attachment 3, *Affidavit of Representative of Consolidated Communications of Fort Bend Company* (July 10, 2006).

[19] Docket No. 24547, *Arbitration for Interconnection between 1-800-4-A-Phone and Southwestern Bell Telephone Company*, Arbitration Award at 8 and 10 (Jan. 25, 2002)

[20] *In re Universal Service Contribution Methodology*, WC Docket No. 06-122, FCC 06-94, ¶¶24-45 (rel. June 28, 2006).

exchange carriers (LECs) on end user subscribers when such subscribers change their presubscribed interexchange carriers (IXCs).[21]

Relevant Court Decisions

Qwest Corp v. PSC of Utah

FTA Section 252 permits interconnection on just, reasonable, and nondiscriminatory terms. Public filing of an interconnection agreement gives CLECs that are not parties to the agreement the opportunity to resist discrimination by allowing them to fully evaluate and request the same terms given to the contracting CLEC.[22]

Southwestern Bell Telephone Company v. AT&T Communications of the Southwest, Inc.

Arbitrators may properly find that no rates need be set for OSS (operations support systems) elements where the parties have failed to file cost studies for such elements. OSS elements are unbundled network elements and thus rates for such elements must be cost-based. The arbitrators may find that such rates will be subject to revision and replacement after the parties' cost studies have been filed and reviewed.[23]

IV. Discussion of DPL Issues

This proceeding addresses the issues in the Joint Decision Point List (DPL) filed by the Parties on February 10, 2006:

Sprint Issue No. 2 - Consolidated Issue No. 15

Sprint - Should the definition of End User be modified to permit wholesale services?

Consolidated - Should the definition of "End User" specifically include the subscribers of last-mile providers in addition to the end users of Sprint and Consolidated?

Sprint's Position:

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[21] *Presubscribed Interexchange Carrier Charges*, WC Docket No. 02-53, Report and Order, FCC 05-32 (rel. Feb. 17, 2005)("*PIC Change Charge Order*").

[22] *Qwest Corp v. PSC of Utah*, 2005 U.S. Dist. LEXIS 38306 (D. Utah 2005).

[23] *Southwestern Bell Telephone Company v. AT&T Communications of the Southwest, Inc.*, 1998 WL 657717 at 4 (W.D. Texas, 1998).

Sprint's proposed definition of End User is:

> "End User" - means, whether or not capitalized, the residence or business subscriber that is the ultimate user of Telecommunications Services provided directly to such individual or entity by ILEC or CLEC. Such subscribers shall be physically located within the Rate Center within the ILEC's certificated area either directly or by means of a dedicated facility from the subscriber's physical location to a location within the Rate Center (such as FX service).[24]

Sprint argued that its definition contemplates Sprint entering into relationships with last-mile providers to provide competitive voice services within Consolidated's service territory.[25] Sprint expressed concern that by excluding its definition of end user, Consolidated would effectively deprive Sprint of the ability to support its business model.[26] Sprint claimed that without its proposed definition of end user, the agreement could be interpreted to preclude its use in support of the wholesale services Sprint offers.[27] Sprint argued that when other definitions of "End User" have been incorporated into interconnection agreements in Texas, Consolidated has taken the position that these agreements may not be used in support of wholesale services.[28]

Sprint claimed its definition of "End User" makes the Agreement suitable for Sprint to support of both wholesale and retail service.[29] According to Sprint, Consolidated's refusal to accept Sprint's proposed "End User" definition is but one in a series of assaults against Sprint's business model.[30] Sprint contends this Commission has given clear direction that interconnection may not be denied on the basis that it is sought to support wholesale services, and Sprint asserted it cannot accept language that does not explicitly allow wholesale traffic to be exchange with Consolidated.[31]

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[24] *Sprint* Ex. No. 1, Attachment No. 5 - "Definitions" at Pg. 2. (October 12, 2006)

[25] Direct Testimony of James R. Burt, Sprint Ex No. 1 at 16 (November 2, 2006).

[26] Direct Testimony of James R. Burt, Sprint Ex No. 1 at 16.

[27] Direct Testimony of James R. Burt, Sprint Ex No. 1 at 16.

[28] Direct Testimony of James R. Burt, Sprint Ex No. 1 at 16 – 17.

[29] Direct Testimony of James R. Burt, Sprint Ex No. 1 at 17.

[30] Direct Testimony of James R. Burt, Sprint Ex No. 1 at 17.

[31] Direct Testimony of James R. Burt, Sprint Ex No. 1 at 17.

Sprint noted that Consolidated witness Shultz stated he would agree to Sprint's definition of End User if the additional "qualifiers" suggested by Mr. Shultz were included.[32] According to Sprint, however, those "qualifiers" are already included elsewhere in the agreement.[33] Specifically, Sprint notes that the Parties have agreed in Section 10.3 that the traffic will be non-nomadic and that in Section 1.5 Sprint makes clear it intends to enter into business arrangements with other entities and that Sprint will be financially responsible for the traffic sent to Consolidated.[34]

Consolidated's Position:

Consolidated objected to Sprint's proposed definition of End User and argued in the absence of the qualifying language proposed by Consolidated, it would be inappropriate to define an End User as a customer of a third party provider that is not a party to the interconnection agreement.[35] Consolidated claimed its proposed definition of End User recognizes the following: (1) the ultimate End User is the customer of the so-called "last-mile provider" customer of Sprint; (2) Sprint has a business arrangement with that "last-mile provider"; (3) the End User is being provided Telecommunications Services; (4) the Telecommunications Services are non-nomadic; and, (5) the third party last-mile provider for whom the CLEC is providing services is authorized by the interconnection agreement.[36]

Consolidated argued that these five (5) points are important for the following reasons: First, Consolidated argued that the definition of End User, as that term is commonly used, means the retail customer.[37] According to Consolidated, the End User would be a retail customer of some "last-mile provider" and Consolidated asserted that there is no disagreement between Consolidated and Sprint that the End User is a retail customer.[38] Second, Consolidated argued the definition of End User should recognize that Sprint has a business relationship with the last-

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[32] Sprint Post-hearing Brief at 5 (Nov. 10, 2006).

[33] Sprint Post-hearing Brief at 5

[34] Sprint Post-hearing Brief at 5

[35] Direct Testimony of Michael Shultz, Consolidated Ex. 3 at 7 (Nov. 2, 2006).

[36] Direct Testimony of Michael Shultz, Consolidated Ex. 3 at 7.

[37] Direct Testimony of Michael Shultz, Consolidated Ex. 3 at 7.

[38] Direct Testimony of Michael Shultz, Consolidated Ex. 3 at 7.

mile provider. Consolidated asserted the importance of defining End User fully so as to detail the business relationship between Sprint and the last-mile provider, noting that the End User will be at least two companies removed from Consolidated.[39] Third, Consolidated contended that the definition should include the fact that Telecommunications Services are being provided to the End User. Consolidated contended that this is important because Consolidated believes that a company may not do indirectly what it cannot do directly. Consolidated argued that since Sprint is seeking interconnection with Consolidated under the FTA (which requires the company requesting interconnection to be a Telecommunications Carrier) Sprint may not seek interconnection under the pretext of providing Telecommunications Services only to turn around and provide or ultimately provide something that is not a Telecommunications Service to the End User via a last-mile provider.[40] Fourth, Consolidated claimed it is important for the Telecommunications Services to be non-nomadic considering that the End User will be provided service in Voice-over-Internet Protocol (VoIP) format.[41] Consolidated argued that unlike Time Division Multiplex (TDM) or Public Switched Telephone Network (PSTN) traffic, VoIP can be originated from locations that are not fixed, *e.g.*, that are nomadic.[42] Consolidated noted that although Sprint has represented that the VoIP services of its (Sprint's) customers are non-nomadic, Sprint has failed to demonstrate that the Internet Protocol (IP) device with a Sprint telephone number cannot be used at another fixed location.[43] Consolidated argued that because VoIP service is inherently nomadic, the fact that Sprint represents that the service provided to Time Warner is non-nomadic is of concern to Consolidated. Consolidated argued that it is important that the definition of End User include language that clearly indicates that the service at issue is non-nomadic.[44] Finally, Consolidated argued that the phrase "for interconnection services authorized by this Agreement" is important because it obligates the Parties to amend the

[39] Direct Testimony of Michael Shultz, Consolidated Ex. 3 at 8.

[40] Direct Testimony of Michael Shultz, Consolidated Ex. 3 at 8.

[41] Direct Testimony of Michael Shultz, Consolidated Ex. 3 at 8.

[42] Direct Testimony of Michael Shultz, Consolidated Ex. 3 at 8.

[43] Direct Testimony of Michael Shultz, Consolidated Ex. 3 at 9

[44] Direct Testimony of Michael Shultz, Consolidated Ex. 3 at 9.

agreement if and when Sprint enters into a commercial arrangement with another last-mile provider.[45]

Consolidated argued that Sprint's claims that Consolidated is preventing Sprint from supporting its business model by not agreeing to Sprint's definition of "End User" is not supported by the facts. According to Consolidated, it offered two compensation approaches for Sprint's last-mile provider traffic, neither of which depends on Sprint's definition of "End User."[46]

Arbitrators' Decision

The Arbitrators adopt the definition of "End User" proposed by Sprint as modified by the qualifying language proposed by Consolidated. The Arbitrators recognize the business model proposed by Sprint is sufficiently different from the standard business model that a variation of the traditional definition of End User is needed. The following definition of End Use is adopted by the Arbitrators:

> "End User" means, whether or not capitalized, the residence or business subscriber that is the ultimate user of Telecommunications Services provided directly to such individual or entity by ILEC or CLEC, including the ultimate subscriber of non-nomadic voice services when CLEC has a business arrangement with a third party Last Mile Provider for interconnection services. Such subscribers shall be physically located within the Rate Center within the ILEC's certificated area either directly or by means of a dedicated facility from the subscriber's physical location to a location within the Rate Center (such as FX service).

Sprint's business model obviously contemplates a business relationship between Sprint and last-mile providers where such last-mile providers provide direct service to the End Users. The adopted definition of End User is concise and comprehensive, and addresses the reality of the proposed business model. The Arbitrators note that the definition of End User adopted for this agreement is narrowly tailored for use in interconnection agreements where one party utilizes the services of last-mile providers to provide voice services directly to end users.

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[45] Direct Testimony of Michael Shultz, Consolidated Ex. 3 at 9.

Sprint and Consolidated Issue No. 3

Sprint *- Should the Agreement contain language that requires Sprint to name a single wholesale customer and requires Sprint to effect Amendments to provide services to additional customers?*

Consolidated *- Should the Agreement contain language that limits the Interconnection Arrangement to be established pursuant to this agreement solely to Sprint's business arrangement with Time Warner unless the Agreement is amended by the Parties, which such amendment should not be unreasonably withheld?*

Sprint's Position:

Sprint stated that despite Consolidated's knowledge that Sprint intends for its wholesale services to be available to any interested cable company or other last-mile provider, Consolidated nonetheless insists that the interconnection specify and be limited to a single, named Sprint wholesale customer.[47] Sprint argued that Consolidated's proposed additions to sections 1.5 and 1.6 should be excluded from the Agreement because no carrier requesting interconnection is customarily required to identify its customers in the interconnection agreement. Sprint further contended that carriers are not required to amend their interconnection agreements each time additional customers are to be served.[48] Sprint asserted that Section 1.6 gives Consolidated the power and ability to prevent Sprint from serving any other last-mile providers until Consolidated gives its consent for these additional competitors to enter Consolidated's markets.[49] Sprint claimed its experience of battling Consolidated on multiple legal fronts for the past two years to obtain a signed interconnection agreement makes it extremely improbable that Consolidated will consent to an amendment for another last-mile provider competitor.[50]

Moreover, Sprint questioned Consolidated's proposed language that, according to Sprint, appears to reflect Consolidated's concern that Sprint's traffic will somehow constitute so-called "phantom traffic" and that Consolidated appears to be concerned that it will not be able to

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[46] Consolidated Post-hearing Brief at 3 (Nov. 10, 2006).

[47] Direct Testimony of James R. Burt, Sprint Ex.1 at 19.

[48] Direct Testimony of James R. Burt, Sprint Ex.1 at 19.

[49] Direct Testimony of James R. Burt, Sprint Ex.1 at 19.

[50] Direct Testimony of James R. Burt, Sprint Ex.1 at 19-20.

identify or bill the traffic as Sprint-originated traffic.[51] Sprint argued that phantom traffic arises in a situation where the party delivering the traffic does not accept the responsibility for such traffic.[52] Sprint, however, claimed it has already stated it will be responsible for all traffic Sprint delivers to Consolidated, and according to Sprint, that means that there will be no "phantom traffic." Furthermore, Sprint noted that if Consolidated is concerned about so-called "phantom traffic," Sprint has offered to include the following language in the agreement: "CLEC represents that it has or may enter into business arrangements with last-mile providers regarding traffic to be exchanged in according with this Agreement. CLEC will be financially responsible for all traffic sent to ILEC under such business arrangements."[53] Additionally, Sprint argued it has proposed language that Sprint will not act as a transit provider. Therefore, Sprint contends that Consolidated has more than adequate assurance that all traffic it receives from Sprint will be solely Sprint's traffic.[54]

Sprint claimed that Consolidated admitted that if the Parties had successfully negotiated a final agreement three months ago specifying that Time Warner Cable would be the last-mile provider, the interconnection agreement would already be stale and would require amendment.[55] Sprint noted that circumstances change and in particular ownership of cable companies can and does change.[56] According to Sprint, that has been demonstrated by the recently announced plans of Time Warner Cable to transfer cable facilities that might otherwise have been used to service customers in Consolidated's territory.[57] Moreover, Sprint claims that recent history demonstrates that acquisitions of new business partners by Sprint are not hypothetical situations as demonstrated by its recently executed Sprint/SuddenLink wholesale agreement.[58]

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[51] Direct Testimony of James R. Burt, Sprint Ex.1 at 19-20.

[52] Direct Testimony of James R. Burt, Sprint Ex.1 at 21.

[53] Direct Testimony of James R. Burt, Sprint Ex.1 at 21.

[54] Direct Testimony of James R. Burt, Sprint Ex.1 at 21.

[55] Sprint Post-hearing Brief at 7.

[56] Tr. at 135 (Burt) (Nov. 2, 2006).

[57] Tr. at 135 (Burt)

[58] Sprint Post-hearing Brief at 7.

Sprint also expressed concern about Consolidated's representation that it will not unreasonably withhold an amendment to add a new or different last-mile provider noting that terms such as "reasonable" or "unreasonable" are subjective. Sprint expressed concern about having to renegotiate the terms of the agreement and bring it back before the Commission to get approval and believes such a requirement is extraordinary and unnecessary.[59]

Sprint claimed that if it is required to obtain Consolidated's approval to amend the agreement, Consolidated could delay or at least control the timing of introduction of competition.[60] Sprint further noted that in Illinois Consolidated agreed to a solution whereby the agreement does not name any last-mile provider with whom Sprint has a wholesale commercial agreement, but states instead that "the CLEC will identify to ILEC all last-mile providers."[61] Sprint stated that it is willing to accept the identical language included in the Consolidated Illinois agreement on this issue but stressed that this language only obligates Sprint to "identify to ILEC all last-mile providers" and does not mandate any advance notification or require any amendment to the interconnection agreement.[62]

Consolidated's Position

Consolidated claimed that Sprint should be required to state that it intends to exchange traffic on behalf of Time Warner Cable (TWC).[63] Consolidated asserted that transparency is one of the principal tenants of the FTA and in this case the forthright treatment of the IP-PSTN termination traffic sent to Consolidated through the private arrangement between TWC and Sprint is critical to the proper evolution of the proposed interconnection agreement in the event the FCC addresses Sprint's business arrangement in one or more of the various proceedings currently under consideration.[64] Moreover, Consolidated argued that Sprint should be required to amend the interconnection agreement in the event Sprint were to enter into a private

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[59] Sprint Post-hearing Brief at 7.

[60] Sprint Post-hearing Brief at 7.

[61] Tr. at 141 (Burt) & Sprint Ex. 1 (Burt Direct Testimony), Attachment JRB-1, Section 1.5 (Sprint Consolidated Agreement).

[62] Sprint Post-hearing Brief at 9.

[63] The Arbitrators are aware that at this point in time Sprint and TWC have discontinued negotiations and that TWC is used here for explanatory purposes only.

commercial agreement with another cable provider. Consolidated noted that Sprint has only identified four last-mile providers operating in the service areas of Consolidated.[65] Consolidated claimed that amendments to the Agreement should not be burdensome and should be extremely rare. Consolidated claimed it would fully cooperate with Sprint and would not unreasonably withhold approval of any such amendment.[66]

Consolidated offered a second option of notification that would not require Consolidated's approval, but would instead require Sprint to provide written notice of any other last-mile provider within Consolidated's local calling area with which Sprint establishes a business relationship for interconnection services.[67] Consolidated stressed that its first choice was for Sprint to file an amendment to the agreement if and when Sprint has an agreement with another cable provider.[68]

Consolidated argued that its knowledge and understanding of the last-mile providers it is indirectly serving, and the service areas and prospective end users such last-mile providers may serve, is of critical importance in ensuring that the interconnection arrangement Sprint seeks remains reliable for end users. Consolidated maintained that in order to ensure the agreement remains current and accurate, Sprint and Consolidated should amend the agreement to reflect the addition of any last-mile providers.[69] According to Consolidated there is not much likelihood of Sprint needing to make numerous amendments to the agreement to include additional last-mile providers during the term of the agreement, and any accompanying burden would be insignificant.[70] Furthermore, according to Consolidated, the disclosure of each originating last-mile provider of Sprint's traffic and the amendment of the Agreement to reflect such additional providers would not harm Sprint's business processes in any material way.[71]

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[64] Direct Testimony of Michael Shultz, Consolidated Ex.3, at 9-10.

[65] Direct Testimony of Michael Shultz, Consolidated Ex.3, at 9-10.

[66] Direct Testimony of Michael Shultz, Consolidated Ex.3 at 9-10.

[67] Direct Testimony of Michael Shultz, Consolidated Ex.3 at 11.

[68] Direct Testimony of Michael Shultz, Consolidated Ex.3 at 11.

[69] Consolidated Post-hearing Brief at 6.

[70] Consolidated Post-hearing Brief at 6.

[71] Consolidated Post-hearing Brief at 6.

Arbitrators' Decision

The Arbitrators adopt Consolidated's second choice of notification procedures and find that (1) Sprint must provide Consolidated notice before it adds an additional last-mile provider or before it discontinues providing service to a last-mile provider; (2) there is no requirement to amend the Interconnection Agreement when last-mile providers are added or removed and (3) there is no requirement for Sprint's last-mile providers to be memorialized in the agreement.

The Arbitrators note that Section 1.5 of the Illinois Sprint/Consolidated Interconnection Agreement does not require that the identification of Sprint's last-mile providers be memorialized in the Agreement, nor does Section 1.6 of that agreement require an amendment when last-mile providers are added or removed.[72] In addition, the Arbitrators note that the Interconnection Agreement between Consolidated and ETS does not contain Sections 1.5 and 1.6 or language comparable to these provisions.[73]

The Arbitrators agree with Sprint that a requirement to amend the agreement for Sprint to begin or end a business relationship with a last-mile provider limits the scope of the agreement and unnecessarily inhibits Sprint's ability to enter into relationships with additional last-mile providers. The Arbitrators note that Sprint agreed to the identical language included in its agreement with Consolidated Illinois[74] and neither Sprint nor Consolidated offered a compelling argument as to why such language should not be adopted in this case.

The Arbitrators adopt the following language:

> 1.5 CLEC has indicated that it has or intends to enter into business arrangements with "last-mile" providers and such business arrangements give CLEC the authority to interconnect with ILEC for traffic associated with such arrangements. CLEC will identify to ILEC all "last-mile" providers within ILEC's Local Calling Area with which CLEC establishes a business relationship for interconnection services. CLEC will be financially responsible for all traffic sent to ILEC under such business arrangements. Neither Party may use services obtained under this Agreement to provide services to other "last-mile" providers without written notification to the other Party. Provided, that CLEC may not use

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[72] Direct Testimony of James R. Burt, Sprint Ex. 1, Attachment JRB 1, General Terms and Conditions, Page 1, Section 1.5 and 1.6. (Bates Page 54).

[73] Direct Testimony of James R. Burt, Sprint Ex. 1 Attachment JRB 2, (Bates Pages 106)

[74] Tr. at 140, 144 (Burt)

this Agreement to provide interconnection services to a "last-mile" provider that is a CMRS carrier.

1.6 CLEC warrants that the services it provides to "last-mile" providers serving End Users in ILEC's Local Calling Area, by tariff or contract, require the service provided to the End Users to be only from a fixed location at each End User's principal service address located in ILEC's Local Calling Area. CLEC agrees to conduct audits or take other commercially reasonable steps to verify that each of the "last-mile" providers serving End Users in ILEC's Local Calling Area is acting in compliance with this requirement. CLEC agrees that if the services are no longer exclusively applicable to End Users at fixed locations, then CLEC will reasonably notify ILEC such that the Parties can negotiate arrangements for handling such traffic.

Sprint Issue 4 - Consolidated Issue 5

Sprint - Should the same compensation terms apply regardless of which entity originates or terminates the call, and should traffic that utilizes VoIP protocol be treated differently if it is exchanges using TDM format?

Consolidated - Should VoIP traffic be treated separately for compensation and other purposes in the Agreement?

Sprint's Position:

Sprint argued that the traffic being exchanged between the Parties should be handled in the same manner as other voice traffic and the fact that a call may initiate or complete at the retail end users' premises using IP technology is not relevant to how Sprint and Consolidated exchange the traffic at the interconnection point or how they should compensate each other.[75] Sprint stated that Consolidated's three concerns regarding this issue are baseless.[76] First, Sprint argued that Consolidated's concern regarding nomadic service rate arbitrage is unfounded. Although Sprint acknowledged that there is a form of VoIP service (which Sprint refers to as Internet based VoIP) that can be nomadic, the service provided by Sprint and the last-mile provider is not a nomadic service. Thus, Sprint argued, the provisions Consolidated proposes to mitigate the risk of access arbitrage associated with nomadic service are unnecessary and inappropriate. Sprints stated that Consolidated need not take Sprint's word that the voice

[75] Direct Testimony of James. R. Burt, Sprint Ex.1, at 22.

[76] Direct Testimony of James. R. Burt, Sprint Ex.1, at 22.

services contemplated under that agreement will be non-nomadic; Sprint has expressly agreed to include language in the agreement that mandates that the traffic will be non-nomadic[77]

Second, Sprint argued that certain of the requirements proposed by Consolidated erroneously presuppose that Sprint's position as a wholesale provider increases rather than eliminates the so-called "phantom traffic" concern.[78] Sprint claimed that its ownership of the traffic at issue and its financially responsibility for such traffic eliminates any need for Consolidated to "go behind" Sprint in order to track and associate traffic with some other responsible party.[79]

According to Sprint, the Commission's emphasis was on the fact that Sprint and Consolidated, at the point of interconnection, would be exchanging ordinary TDM traffic.[80] According to Sprint, this observation undermines Consolidated's position that it is entitled to lopsided interconnection terms because traffic to be exchanged with Sprint may originate or terminate using IP protocol.[81]

In Sprint's opinion Consolidated's proposed Attachment 10 includes a collection of discriminatory, burdensome, and one-sided terms, including a novel approach whereby Sprint pays Consolidated whether the call originates or terminates with Sprint's wholesale customer's end user and Consolidated never pays, even when its customers make intraLATA toll calls terminating to the end user of a Sprint wholesale customer.[82] Sprint claimed that any of the legitimate topics included in Consolidated's proposed Attachment 10 are already covered elsewhere in the Agreement and recommended that Attachment 10 be rejected in its entirety.[83]

Sprint argued it has gone to great lengths to address Consolidated's articulated concerns regarding "phantom traffic" and notes it has agreed to include language in Section 10.3 of the Agreement that precludes either Party from exchanging traffic that is nomadic, at least until such

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[77] Direct Testimony of James. R. Burt, Sprint Ex.1 at 22-23.

[78] Direct Testimony of James. R. Burt, Sprint Ex.1 at 23.

[79] Direct Testimony of James. R. Burt, Sprint Ex.1 at 23.

[80] Direct Testimony of James. R. Burt, Sprint Ex.1 at 23.

[81] Direct Testimony of James. R. Burt, Sprint Ex.1 at 23-24.

[82] Direct Testimony of James. R. Burt, Sprint Ex.1 at 24.

time as the Parties agree to the terms of such traffic exchange.[84] Sprint proposed Section 10.2 language that also addresses Consolidated's arbitrage concerns, noting that the proposed language states that all traffic, regardless of whether the Internet protocol is used, will be compensated like circuit switched calls which, according to Sprint, is an approach in line with the Sprint/Consolidated Illinois agreement and Consolidated/ETS agreement.[85] Sprint claimed that while there is an argument that VoIP traffic is not subject to access charges, Sprint is not making that claim here and is explicitly stating that it will pay access for VoIP traffic if that same traffic would be subject to access charges if it were circuit switched or non-VoIP traffic.[86] Sprint argued that because of its position on this issue, the Arbitrators need not reach what would otherwise be one of the most controversial compensation topics: whether access charges apply to VoIP traffic that is non-local in nature.[87]

Sprint noted that the Parties have agreed to several issues that address arbitrage concerns. According to Sprint, the Parties have agreed to language in Attachment 3 that identifies the industry standards the Parties will use concerning exchange of call identifying information, e.g., calling party number (CPN).[88] Sprint noted that the Parties have also agreed to language in Attachment 2, Section 2.0 that specifically addresses CPN and Automatic Number Identification (ANI).[89]

Sprint claimed that it has addressed Consolidated's wholesale arrangement with the last-mile providers by offering language in Section 1.5 that makes Sprint financially responsible for all traffic sent to Consolidated.[90] Sprint disagrees with Consolidated's position that unique terms are justified because calls may originate or terminate as VoIP Traffic. According to Sprint, Consolidated's obligation to interconnect on reasonable and nondiscriminatory terms does not

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[83] Direct Testimony of James. R. Burt, Sprint Ex.1 at 24.

[84] Direct Testimony of James. R. Burt, Sprint Ex.1 at 24.

[85] Direct Testimony of James. R. Burt, Sprint Ex.1 at 25.

[86] Direct Testimony of James. R. Burt, Sprint Ex.1 at 25.

[87] Direct Testimony of James. R. Burt, Sprint Ex.1 at 25.

[88] Direct Testimony of James. R. Burt, Sprint Ex.1 at 25.

[89] Direct Testimony of James. R. Burt, Sprint Ex.1 at 25-26.

[90] Direct Testimony of James. R. Burt, Sprint Ex.1 at 26.

change because the traffic that Sprint may exchange with Consolidated may initiate or complete as VoIP.[91] Sprint called attention to Consolidated's admission that it cannot tell whether traffic it exchanges with a carrier does or does not originate as VoIP traffic.[92] Sprint further noted that Consolidated acknowledged the traffic that it will exchange with Sprint is traditional TDM traffic.[93] Sprint also claims that because Consolidated has its own VoIP offering in Texas, the Commission can conclude, at the very least, that Consolidated does exchange its own VoIP originated and terminated traffic.[94] Sprint argued that the fact that a Sprint wholesale customer may have an IP-enabled VoIP product is entirely irrelevant to the issue of whether and on what terms Sprint is entitled to interconnection with Consolidated. Sprint claimed the FCC's recent decision on the obligation of VoIP providers interconnected to the PSTN to make USF contributions expressly acknowledges that VoIP providers are reaching the PSTN through arrangements with telecommunications carriers.[95] Sprint also pointed to the FCC statement that "The telecommunications carriers involved in originating or terminating a communication via the PSTN are by definition offering 'telecommunications service.'"[96]

Sprint stated that although what Time Warner Cable is offering is a VoIP product, what Sprint has asked for in the instant proceeding, is telecommunications service. According to Sprint, regardless of what sorting out remains to be done as to regulations that may or may not apply to VoIP providers, the Commission need not even consider that in terms of what obligations the two carrier have to exchange TDM traffic under this agreement.[97]

Sprint acknowledged that in Docket No. 32528, Commission Staff witness Klaus expressed two concerns about arbitrage and "phantom traffic" but claimed Sprint has demonstrated that phantom traffic is not an issue under this agreement because Sprint will be responsible for all traffic it delivers to Consolidated, that Sprint will not act as a transit provider,

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[91] Direct Testimony of James. R. Burt, Sprint Ex.1 at 26.

[92] Direct Testimony of James. R. Burt, Sprint Ex.1 at 26.

[93] Direct Testimony of James. R. Burt, Sprint Ex.1 at 26.

[94] Direct Testimony of James. R. Burt, Sprint Ex.1 at 26.

[95] Direct Testimony of James. R. Burt, Sprint Ex.1 at 27; *see also In re Universal Service Contribution Methodology*, WC Docket No. 06-122, FCC 06-94, ¶¶24-45 (rel. June 28, 2006).

[96] Direct Testimony of James. R. Burt, Sprint Ex.1 at 27, *citing*, Fn 18, *Id. ¶41.*

and that there are provisions in the agreement that preclude arbitrage.[98] Sprint expressed its confidence that the language either agreed to by the Parties in this arbitration or proposed by Sprint addresses the concerns raised by Mr. Klaus in Docket No. 32582.[99]

Sprint explained that although it is true that the retail service to be provided utilizes IP, all traffic exchanged between Sprint and Consolidated will utilize TDM protocol.[100] Sprint also argued that unless there is something inherent about the protocol at the customer premises that makes the exchange of traffic between the two carriers unique, the use of a particular protocol should not dictate the terms of an agreement between two carriers[101] Moreover, Sprint maintained that there is nothing about the use of Internet protocol that calls for special treatment. First, the service is jointly provided by Sprint and any last-mile provider as a direct substitute for the service a customer presently receives from Consolidated. Second, the service provided at the subscriber's residence is non-nomadic. Third, calls to 911 will identify the customer's physical location as the address where they reside. Fourth, calls exchanged between Consolidated and Sprint/last-mile provider subscribers will be carried over TDM interconnection trunks following industry standards.[102]

Sprint drew a distinction between the VoIP services being provided by Sprint/last-mile providers and Internet-based VoIP providers and provided a matrix depicting those differences, as follows:[103]

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[97] Direct Testimony of James. R. Burt, Sprint Ex.1 at 28.

[98] Direct Testimony of James. R. Burt, Sprint Ex.1 at 28.

[99] Direct Testimony of James. R. Burt, Sprint Ex.1 at 28-29.

[100] Direct Testimony of James. R. Burt, Sprint Ex.1 at 29.

[101] Direct Testimony of James. R. Burt, Sprint Ex.1 at 29.

[102] Direct Testimony of James. R. Burt, Sprint Ex.1 at 30-31.

[103] Direct Testimony of James. R. Burt, Sprint Ex.1 at 30-31.

Sprint/Last-Mile Provider VoIP Service	Internet-Based VoIP
No transport over the public Internet.	Transported over the public Internet
Subscriber location does not change	Subscriber may utilize service from virtually any broadband connection to the Internet.
Telephone numbers are assigned to subscribers based on the rate center in which they physically reside	Telephone numbers can be assigned from any rate center in which the provider has access to telephone numbers. There is no correlation between the telephone number and the physical location of the subscriber
Conventional E911 service is provided using the subscriber's serving address to populate 911 database.	Allows subscriber to provide the "registered location" to its service provider that indicates where emergency services would be dispatched. If the customer changes locations, a new "registered location" should be provided.[21]

Sprint alleged it does not make sense to relieve one party to an interconnection agreement from reciprocal compensation obligations based on what the other party's customer may pay.[104] Sprint claimed that by definition reciprocal compensation allows a carrier to recover its costs for transporting and terminating traffic of another carrier.[105] Moreover, according to Sprint, federal rules state that reciprocal compensation rates are symmetrical unless the CLEC can provide evidence that its costs exceed the ILEC's costs.[106] Sprint claimed that Consolidated, solely on the basis that the retail end user's voice services initiate and complete as VoIP, is attempting to pervert an industry accepted and codified intercarrier compensation scheme.[107] Sprint argued that Consolidated does not insist on this compensation in Consolidated's agreement with ETS where, according to Sprint, bill and keep applies for local traffic and access charges apply to non-local traffic.[108]

Sprint noted that Consolidated Illinois agreed to the same compensation terms with Sprint that Sprint has proposed in this arbitration and further noted that Consolidated has been unable to

[104] Direct Testimony of James. R. Burt, Sprint Ex.1 at 33.

[105] Direct Testimony of James. R. Burt, Sprint Ex.1 at 33; *see aslo* 47 C.F.R. §51.801(e).

[106] Direct Testimony of James. R. Burt, Sprint Ex.1 at 33; *see also* 47 C.F.R. §51.71(b).

[107] Direct Testimony of James. R. Burt, Sprint Ex.1 at 33

[108] Direct Testimony of James. R. Burt, Sprint Ex.1 at 33.